

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CV-72-D

YOUNG BOK SONG,
Plaintiff,

v.

JAMES WELCH,
MICHAEL FITZGERALD,
and ROBERTO RIVERA,
Defendants.

ORDER

Young Bok Song (“plaintiff” or “Song”) sued James Welch, Michael Fitzgerald, and Roberto Rivera (collectively “defendants”) under 42 U.S.C. § 1983. On July 16, 2010, the court dismissed the complaint against Welch and Fitzgerald for failure to state a claim upon which relief can be granted. See Song v. Welch, No. 5:09-CV-72-D, 2010 WL 2813305, at *2 (E.D.N.C. Jul. 16, 2010) (unpublished). The court took no action as to Rivera because Rivera had not been served with the complaint. See id. at *1 n.1.

On July 29, 2010, Song filed a motion to continue and asked for an order compelling the U.S. Marshal to locate Rivera and to serve him with the complaint [D.E. 72]. On March 15, 2010, however, the U.S. Marshal notified the court that he had been unable to locate and serve Rivera [D.E. 38]. Moreover, there is no need to compel the U.S. Marshal to locate and serve Rivera. Even if Rivera is located and served, the same deficiencies in plaintiff’s complaint remain. See Song, 2010 WL 2813305, at *1–2. Thus, plaintiff seeks to compel a futile act, and the court declines to do so. Plaintiff’s motion to continue and to compel [D.E. 72] is DENIED.

SO ORDERED. This 13 day of January 2010.


JAMES C. DEVER III
United States District Judge